

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission's	)	
Rules to Ensure Compatibility	)	CC Docket No. 94-102
with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	

**COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA"),<sup>1</sup> pursuant to the Public Notice released November 20, 2001,<sup>2</sup> hereby submits its comments in support of the petitions for reconsideration filed by Cingular Wireless LLC ("Cingular"), Nextel Communications, Inc. and Nextel Partners, Inc. ("Nextel"), and Verizon Wireless ("Verizon").<sup>3</sup> Cingular, Nextel, and Verizon ("Petitioners") have requested the Commission to reconsider portions of its order addressing the Petitioners' respective Phase II E-911 waiver requests.<sup>4</sup>

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<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> *Public Notice*, Cingular, Nextel, and Verizon File Petitions For Reconsideration of Commission Orders on Wireless E911 Phase II Waiver Requests, CC Docket No. 94-102, (rel. Nov. 20, 2001).

<sup>3</sup> *Cingular Petition for Reconsideration*, filed Nov. 13, 2001 ("Cingular Petition"); *Joint Petition for Clarification and Partial Reconsideration of Nextel Communications, Inc. and Nextel Partners, Inc.*, filed Nov. 13, 2001 ("Nextel Petition"), *Verizon Wireless Petition for Reconsideration*, filed Nov. 13, 2001 ("Verizon petition").

<sup>4</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless LLC*, CC Docket No. 94-102, *Order*, FCC 01-296 (rel. Oct. 12, 2001) ("Order").

Consistent with the Commission's rules and waiver precedent, CTIA agrees with the Petitioners that the Commission should reconsider its "strict liability" determination that a carrier will be deemed noncompliant if it does not meet its benchmarks. CTIA also supports the modifications requested by Cingular and Verizon to modify their interim deployment schedule. While the wireless industry is committed to deploy E-911 Phase II rapidly, unachievable benchmarks will do nothing more than frustrate the process. Finally, the Commission should reconsider the four-year reporting requirement adopted in its Order since the Commission has failed to obtain Office of Management and Budget ("OMB") approval.

### **DISCUSSION**

The Petitioners seek reconsideration of the Commission's decision to institute an enforcement action against a wireless carrier that does not meet the schedule set forth in the approved deployment plan, regardless of whether the carrier obtains further waivers or extensions of the E-911 Phase II requirements. In its Order, the Commission states that a wireless carrier will be deemed noncompliant and the Commission may impose penalties and/or economic sanctions against a carrier that does not meet every benchmark established by the Commission, even if its failure to meet a benchmark results from something beyond the control of the carrier.<sup>5</sup>

CTIA agrees with the Petitioners that the Order's drastic enforcement measure is inconsistent with the Commission's Phase II waiver policies and longstanding policy to waive its rules temporarily where circumstances beyond the control of licensees makes violations of the rules unavoidable.<sup>6</sup> The Commission itself has recognized that during the transition to full Phase

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<sup>5</sup> See *Order* at ¶35.

<sup>6</sup> See *Nextel Petition* at 10.

II deployment, there may be situations in which it is not possible for a carrier to satisfy the Commission's Phase II standards by the prescribed deadlines. While many of the Commission's established benchmarks in the Order correspond with respective dates requested by the Petitioners, the proposed timetables were predicated upon the availability of necessary upgrades and handsets.<sup>7</sup> As CTIA has stated previously, the wireless industry is committed to meeting benchmarks to provide Phase II E911 service to subscribers, but carriers can only do as much as the currently available wireless location technology permits them to do.

The Commission's apparent "strict liability" determination violates Commission rules that afford carriers the opportunity to rebut a finding of noncompliance.<sup>8</sup> As Nextel explains in its Petition, it "is not alone in its concern regarding the adoption of a draconian enforcement approach that attempts to punish wireless carriers for the potential failings of equipment manufacturers and vendors."<sup>9</sup> Commissioner Abernathy also has "serious concerns about prejudging any future carrier filings regarding E911. The Commission has an obligation to judge each licensee's filing on the merits at the time they are filed."<sup>10</sup> The Commission should

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<sup>7</sup> See Cingular Petition at 15-17 (urging the Commission to adjust Cingular's deployment schedule to conform to technological reality, based upon more concrete information from its handset vendors); Nextel Petition at 10(explaining that Nextel's options for location technology are limited and that the use of the iDEN air interface "requires Nextel to rely on Motorola as a sole source provider"; Verizon Petition at 10 (explaining that the possibility remains that "vendors may again be unable to accommodate carriers' deployment deadlines").

<sup>8</sup> See Verizon Petition at 5 (citing 47 U.S.C. §503(b)(4) (no forfeiture penalty shall be imposed under this subsection against any person unless and until . . . the Commission issues a notice of apparent liability, in writing, with respect to such person; [and] such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed) and 47 C.F.R. §1.80(f)(3) (the Commission's rules implementing Section 503)).

<sup>9</sup> See Nextel Petition at 10.

<sup>10</sup> See *Order*, Separate Statement of Commissioner Kathleen Abernathy at 3-4.

reconsider this provision of its Order to ensure that its E-911 Phase II rules are consistent with Commission rules.

Cingular and Verizon have asked the Commission to reconsider specific benchmarks relating to the interim deployment schedule so that they are consistent with the availability of E-911 technologies. Specifically, Cingular has requested the Commission to adjust the Phase II deployment schedule for its GSM network and reconsider other related benchmarks related to the sale of E-OTD handsets. The Order requires Cingular to deploy location-capable handsets by October 1, 2001 deadline, failing to consider that E-OTD handsets will not be available to consumers until late second quarter 2002 at the earliest.<sup>11</sup> CTIA agrees with Cingular that “granting a waiver with conditions that cannot be satisfied goes too far” and that the Commission should rescind its referral to the Enforcement Bureau.<sup>12</sup>

Verizon, in its Petition, asks the Commission to modify certain interim conditions contained in the deployment schedule adopted by the Commission. First, Verizon has asked the Commission to eliminate the projected accuracy requirements since the potential average accuracy ranges “were very preliminary and should not have been used to establish any accuracy requirement.”<sup>13</sup> Second, Verizon has asked modify the deployment schedule for Nortel switches to account for the August 1, 2002 availability of Nortel switch upgrades.<sup>14</sup> CTIA agrees with Verizon that the Commission should modify Verizon’s interim deployment schedule as requested to ensure that the conditions in the Order are internally consistent.

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<sup>11</sup> See Cingular Petition at 11-14.

<sup>12</sup> Cingular Petition at 15.

<sup>13</sup> See Verizon Petition at 12.

<sup>14</sup> Verizon Petition at 13.

The modifications Cingular and Verizon have requested to their respective deployment schedules reflect the problems caused by the unavailability of Phase II compliant software and equipment from various network and handset vendors. Because their petitions present evidence supporting the requested modifications, the Commission should grant the relief Cingular and Verizon seek.

Finally, the petitioners request that the Commission reconsider the reporting requirements contained in the Order. CTIA agrees with the Petitioners that the requirement is invalid until the Commission obtains OMB approval pursuant to the Paperwork Reduction Act (“PRA”). As explained by Verizon, while the Commission claims that the Order does not impose an information collection applicable to ten or more entities, PRA obligations are triggered by the reporting requirement’s impact on affected licenses.<sup>15</sup> CTIA agrees with Verizon that “[t]he Commission cannot escape the OMB approval requirements of the PRA simply by breaking paperwork requirements down, carrier by carrier.”<sup>16</sup>

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<sup>15</sup> See Verizon Petition at 14-15.

<sup>16</sup> Verizon Petition at 15.

## **CONCLUSION**

For the reasons set forth above, the Commission should reconsider its enforcement action, the requested modifications to the interim deployment schedules, and the reporting requirements in connection with the Commission's Order.

Respectfully Submitted,

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